week commencing 10th March, 1986, will consist of:

(1) Further discussion on the Railway Budget for 1986-87.

(2) Discussion on the Resolutions seeking disapproval of the following Ordinances together with consideration and passing of Bills in replacement of them:

(a) The Contract Labour (Regulation and Abolition) Amenment Ordinance, 1986.

(b) The Administrative Tribunals (Amenment) Ordinance, 1986.

(3) General Discussion on the General Budget for 1986-87

THE CONSTITUTION (Amendment) Bill, 1986

MR. DEPUTY CHAIRMAN: Now Bills to be introduced. Dr. Kaldate, not here. Shri Chitta Basu.

SHRI CHITTA BASU (West Bengal): Sir, I rise to move for leave to introduce a Bill further to amend the Constitution of India.

The question was put and the motion was adopted.

SHRI CHITTA BASU: Sir, I introduce the Bill.

THE POLICE REPEAL BILL, 1986

SHRI CHITTA BASU (West Bengal): Sir, I rise to move for leave introduce a Bill to repeal the Police Act, 1861.

The question was put and the motion was adopted.

SHRI CHITTA BASU: Sir, I introduce the Bill.

THE CHIEF ELECTION COMMISSIONER (CONDITIONS OF SERVICE) BILL, 1986

SHRI CHITTA BASU (West Bengal): Sir, I rise to move for leave to introduce a Bill to regulate certain conditions of se rvice of the Chief Election Commissioner.

The question was put and the motion was adopted.

SHRI CHITTA BASU: Sir, I introduce the Bill

THE CONSTITUTION (AMENDMENT) BILL, 1982 (TO AMEND ARTICLES 74, 75 etc.)—Contd.

MR. DEPUTY CHAIRMAN: We will now take up further consideration of the Constitution (Amendment) Bill moved by Shri J. P. Goyal on the 21st February, 1986. Shri J. P. Goyal to reply.

SHRI J.P. GOYAL (Uttar Pradesh): Mr. Deputy Chairman, Sir this Bill was discussed two weeks back. I started replying to the debate on that day and I spoke only for five minutes. Just to recapitulate, the amendments which I am seeking by way of this Bill are in respect of articles 74 and 75. The others are consequential amendments. Now, article 74 says: 'There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice.... Here, I have suggested that the following should be added at the end '...except in respect of the matter hereinafter provided...' and I have specified them. I am suggesting that in respect of appointment of Judges, Chief Justices, acting Chief Justices of High Courts and Supreme Court and in the matter of appointment of Governors, Chief Election Commissioner and other Election Commissioners, that is to say, Regional Election Commissioners, there should be an exception made in article 74 and the President should not act on the advice of the Council of Ministers.

[Shri J. P. Goyal]

What I am suggesting is, in the matter of appointment of High Court and Supreme Court Judges and Chief Justices, the President should go by the advice of the Supreme Court itself. In the matter of appointment of Governors, Chief Election Commissioner and Regional Election Commissioners, the advice of a committee consisting of four persons presided over by the Vice-President of India should be accepted by the President. The committee which I propose will consist of the Leaders of the two Houses of Parliament and the Leaders of the Opposition in the two Houses. In the explanation, I have said that the Leader of the Opposition would be that person who is the Leader of the largest group in the Opposition. In this way, it will be a five-man committee which will determine who will be the Chief Election Commissioner and who will be the Governors.

Then, my next amendment relates to article 75. Article 75 says: 'The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister'. There is a similar article in the Constitution which relates to Chief Ministers. At present, there are no guidelines. I am suggesting a guideline in regard to appointment of the Prime Minister. I have suggested that in article 75 of the Constitution, in clause (1), for the words 'the Prime Minister shall be appointed by the President', the words 'The President shall appoint a person elected as the Leader of the House of the people by its members to be the Prime Minister' should be substituted. So what I am suggesting is that the Prime Minister and the Chief Minister should be those persons who are elected by all the members sitting together in the House. Then only that person should be appointed as the Prime Minister by the President or as Chief Minister by the Governor. Now the Members of the Treasury Benches and the hon. Minister have said that this thing is working all right, these provisions in Articles 74 and 75 of the Constitution have stood the test of time, therefore, on amendment was necessary. I would submit that this is not correct. In difficult situations in our constitutional history within the last about 35 years, there have been occasions when there has been upheaval regarding the provisions of these two Articles of the Constitution. Before the Sarkaria Commission also, this is one of the points of Centre-State relations. A questionnaire has been issued by the Sarkaria Commission and in Part III of that questionnaire, the heading is "Role of the Governor". I am just giving one example. And a number of questions have been put in that part, but I am reading one—*i.e.* Question No. 3.9, which says:

> "Criticism is often levelled that in making his choice of the Chief Minister in unstable party position after a Ministry in the State resigns on account of a No-Confidence Motion having been passed against it in the State Legislature, the Governor does not act fairly but in a manner calculated to advance the interests of a particular political party or group. In order to guard against the instability of the Ministries the Constitution of the Federal Republic of Germany has introduced a device. Article 64 of the Basic Law lays down that the Bundestag (means the Federal Legislature) can express its lack of confidence in the Federal Chancellor only by electing a successor simultaneously and then requesting the Federal President to dismiss the Chancellor. Do you think that if a similar position is incorporated in our Constitution, it will prevent unnecessary friction between the Governor and the elected representatives on the one hand and reduce occasions for the above-mentioned criticism against the Governor on the other? Have you any other suggestion?"

I have got the replies of political parties including the ruling party because I am preparing the reply for my party which will be submitted on the 11th or 12th. Many political parties have commented on the role of the Governor and they are of the opinion that some guidelines must be there. Some have said that there must be an Inter-State Council and that must

have the guidelines on this subject matter. Some have suggested provisions like what I have introduced in this Bill—*i.e.* only on the floor of the House it should be decided who should be the Leader and who has ceased to be the Leader of the House and it should not be decided by the President/Governor sitting in his chamber. Now the argument of the Treasury Benches is that it has stood the test of time. I fail to understand how these provisions have stood the test of time. A number of times State Ministries have been dismissed by the respective Governors on the advice of course of the Chief Minister but on instruction, according to us, by the Central Government. President's rule has been imposed even though the contention of some of the political parties has been that it should not have been done and such and such person could lead the House. On that day I gave the example of Haryana. In 1982, the combined opposition, particularly the Lok Dal and BJP, could form the government and they had the largest number of elected members and the Governor, Mr. Tapase, had asekd Mr. Levi Lal who was the leader of that BJP—Lok Dal alliance to come at 10 o'clock the next morning, but in the evening without informing anybody the present Chief Minister was sworn in. On what basis has he done it? On his own subjective determination. Similarly, on the other side it was said about Chaudhuri Charan Singh. At the Central level also they accept that such situations have come, and somebody noted that he should not have been appointed as Prime Minister. I am not going into that question but what I am saying is that if there had been guidelines for the President under article 75, in that event, when Morarji Desai had resigned the whole House could have decided on the floor of the House as to who should be the Leader of the House. So, in spite of the objections raised against these amendments by the other side, they also accept that some such situations have arisen. In Andhra Pradesh Mr. N. T. Rama Rao was deposed for one month and some other person was appointed as Chief Minister by the then, Governor, Mr. Ram Lal. Then Mr. Ram Lal had to go, which impliedly means that the decision of the Governor was wrong. But if guidelines were given under article 75, then the House would have decided it. So, it is not a question of no-confidence or confidence. It is not a question of ruling party only. The ruling party also may change. There may be division in the ruling party also. Even under the Anti-Defection Act, one-third may come to this side. So, we do not know. Therefore, when there is some such situation, then, only the House, the elected representatives of the people, should decide as to who will be the Leader of the House, who will be the Prime Minister or Chief Minister, who will lead the country or the State. So, in my submission, there is no harm. No doubt, power has been given to the President to appoint the Prime Minister and to the Governor to appoint a Chief Minister. Now, in the year 1984 also, at the Central level a situtation arose—which I pointed out that day. When, unfortunately, the then Prime Minister, Shrimati Indira Gandhi, died, the question was who should be the Prime Minister of the country. The President, in his own discretion, appointed the present Prime Minister as the Prime Minister and thereafter his appointment was approved by the party after two or three days. I submitted that day that this should not have been done. Earlier, on the death of Prime Minister Jawaharlal Nehru and Lal Bahadur Shastri, there was an interim Prime Minister and then there was an election in the ruling party which was the majority party. Then, after the election, the President appointed the person who was elected by the party. Democracy has to be followed not only in the House but in the party also, in all the political parties of the country. So, in my submission article 75 requires certain giudelines and the guidelines can only be that the question as to who should be the Prime Minister or Chief Minister should be decided on the floor of the House.

In Jammu and Kashmir also a similar situation arose when Farooq Abdulla had to go and the present Chief Minister was sworn in. Now, this is the position regarding article 75 and the provisions in the Constitution regarding the Chief Ministers and the role of the Governor. That touches the point regarding the appointment of Chief Ministers also.

[Shri J. P. Goyal]

Now, regarding the appointment of Judges that day the honourable Minister, Mr. Bhardwaj, said. We have always accepted the present Ministers. I told the House that as regards myself, I do not have any complaint against the two Law Ministers today because, according to me there is no complaint against them that they won't accept the advice of the Chief Justice with whose consultation appointment of Judges has to take place under the Constitution. But situations have been there in the past and they may be there in the future also. To meet all situations I think it is better—and there will be no harm—that there should be separation of the executive and the judiciary at the higher level also, that is, at the stage of appointment of Judges of the Supreme Court and High Courts just as at the lower level where it is done only under the guidance of the High Courts. The appointment of District Judges and Munsifs—of course, after competition—and their transfers, etc., are under the control and guidance of the High Court. They are under the control and guidance of the High Court. So, similarly, on the appointment of the High Court and the Supreme Court Judges also the executive should not have its say. Let it be left to the Supreme Court. At present there are 18 Judges. More are likely to come. The appointment should be made on the advice of the Supreme Court Judges, and not on the advice of, or in consultation with, one person only, the Chief Justice. Let the entire Supreme Court Judges in a meeting decide on who should be appointed as Judge of the High Court or the Supreme Court. In the matter of appointment to the High Court, I have suggested that the High Court itself should be consulted by the Supreme Court. So, in this way, the President should act on their advice.

The function of the Chief Election Commissioner is very important in our democracy Therefore, the Chief Election Commissioner should also not be appointed by the President on the advice of the Council of Ministers. There I made a suggestion about a committee. The recent appointment of the former Chief Election Commissioner as Governor, in our circles, in political circles, has not been liked. The role of the Governor has been referred to the Sarkaria Commission also, and so much comment is being made. It is being said that he is a nominee or agent of the Central Government. At least the Chief Election Commissioner for the first time has been appointed as Governor. This should not have been done. It does not give a good impression. It is being thought that he was an agent of the Government and now also he is an agent of the Government. A person has to retire at the age of 65. Let him live a retired life.

Regarding Governors I have suggested that they should not be removed in the manner they are done now. They should be removed only in the way in which a Supreme Court Judge can be removed, I mean to say after Parliament decides about their removal.

So, I would appeal that these provisions should be accepted by the hon. Minister. If he does not agree with me, let it be referred to a select committee, if he feels like that. Or if he feels, as he suggested, that I should withdraw, I shall have to withdraw it instead of getting it rejected. Then, I can wait till the Sarkaria Commission has its comments and the Government bring a legislation amending the relevant provisions of the Constitution after the report of the Sarkaria Commission.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Hon. Deputy Chairman, Sir, I had replied on these points. It is only a repetition by my friend, Mr. Goyal.

So far as all these issues are concerned, as the Constitution stands today, they are not permissible.

Now, with regard to the questions into which the Sarkaria Commission is going, we welcome the Sarkaria Commission's recommendations. We are waiting for them. And parties, all the political parties, institutions, Members of Parliament and everybody have been sent this questionnaire. This exercise will definitely instruct the mind of the Government the direction in which we may have to amend, if at all, the Constitution.

So, all these issues are dealt with in the questionnaire. We would not say that this system has failed. My submission to my friend is that the system as it is has worked quite well. For instance, I will take the Election Commission. The Election Commission in India has done praiseworthy work because the elections have been fair in India throughout. Nobody in India or outside India disputes this claim. So, if any further improvements are there, they can always be welcomed. But this is a system in which once a political party is returned to power, then, that party has to look after the destiny of the nation so long as it commands the majority in the Lok Sabha. Therefore, you cannot allow other parties and say, "OK. We have been elected. But tell us what do you say." That is a collective co-operation in the House and outside the House, which the Opposition and the ruling party have to carry on. We have demonstrated that practically. In all major decisions of the Government, we have talked to the Opposition, we have talked to them on vital issues. So, that co-operation is there, but there cannot be a joint ruling of the country by the Opposition as well as by the ruling party. That is not permissible. You have to be satisfied with the mandate of the people. If you want a different system, then this private Member's Bill cannot decide the fate of the nation by saying that this is the best system we can have. This is, as you know, a very vital question. Sarkaria Commission's Report will come and we will discuss it here and apply our mind to that.

You have pointed out certain things that somewhere the Governors floundered somewhere or the political parties floundered. This is very much possible in a big democracy, but I always submitted that it is the individual who occupies a particular chair that lends dignity to the chair and the responsibility he feels. So, it is not a question of a particular system, it is the individual failing in responsibility I have gone into all these aspects.

In regard to the Judges' appointment, I have told Shri Goyal that we are prepared to discuss. You are a senior counsel in the Supreme Court and you know the Judges are not merely appointed by the Executive. Their process of appointment starts from the Chief Justice and goes right up to the Chief Justice of the Supreme Court and then it comes to the Executive. I assure the hon. Member that we will not normally go against the recommendations of the Chief Justice of India either in the matter of appointment or in the matter of transfer or promotion of judges. You can take it from us. We can always discuss even outside the House the instance where you think there is a gross violation of norms of appointment. These questions are wholly unfounded and I would request him to withdraw his Bill.

SHRI J. P. GOYAL: All right, I withdraw the Bill hoping that after the report of the Sarkaria Commission the Government will bring its own Bill.

MR. DEPUTY-CHAIRMAN: Has the Hon. Member leave of the House to withdraw his Bill?

SOME HON. MEMBERS: Yes.

The Bill was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: Shri M. Basavaraju is absent. So, we go to the next. Shri J. P. Goyal again.

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1982 (TO AMEND SECTIONS 21, 22 OF ACT 43 OF 1951.

SHRI J. P. GOYAL (Uttar Pradesh): I am just moving the Bill for consideration.

The Bill is No. 23 of 1982—The Representation of the People (Amendment) Bill, 1982. I cannot press half of this Bill, now, reason being that was regarding defections. The Bill was introduced in 1982. In the meanwhile we have unanimously passed in both the Houses the Anti-Defection Act. Therefore, Section 4 cannot be taken into consideration at all. It has become redundant after the passing of the Anti-Defection Act.